

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

IN THE MATTER OF THE APPLICATION OF)
EAGLE POINT COGENERATION)
PARTNERSHIP ("EAGLE POINT") AND)
PUBLIC SERVICE ELECTRIC AND GAS)
COMPANY ("PSE&G") FOR THE APPROVAL)
OF AN AMENDMENT AND RESTATEMENT)
OF THE POWER PURCHASE AND)
INTERCONNECTION AGREEMENT AND GAS)
SERVICE AGREEMENT CURRENTLY)
EXISTING BETWEEN EAGLE POINT AND)
PSE&G)

ENERGY

ORDER APPROVING
AGREEMENT

DOCKET NO. EM01080489

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated August 14, 2001, Public Service Electric and Gas Company ("PSE&G" or "Company") and Eagle Point Cogeneration Partnership ("Eagle Point") (collectively, "Co-Petitioners") filed a petition with the Board of Public Utilities ("Board") to approve an Amended and Restated Power Purchase Agreement ("Amended PPA"), an Interconnection Agreement, an Amended and Restated Gas Service Agreement ("Amended Gas Service Agreement") and a Gas Call Agreement (the last two agreements collectively, "Gas Agreements"; all agreements, collectively, "Amended Agreements") between PSE&G and Eagle Point. Co-Petitioners also requested expedited treatment of this matter and confidential treatment of certain portions of the petition. A copy of the petition was served upon the Division of the Ratepayer Advocate ("Advocate").

The Amended PPA modifies the existing PPA in three major respects. First, the Amended PPA eliminates the requirement that Eagle Point maintain its status as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978. Second, the Amended PPA gives Eagle Point the right to meet its supply obligations from any available source rather than being required, as it is currently obligated under the existing PPA, to supply PSE&G solely from a single facility. Third, the Amended PPA provides Eagle Point with make-up rights in the event deliveries are curtailed due to force majeure occurrences.

In return for these modifications, the Amended PPA established fixed energy prices for the duration of the term of the existing PPA, based upon a projection of energy costs for the duration of the agreement. On a net present value basis, the fixed energy prices are asserted by Co-Petitioners to be equivalent to a 7.6 % reduction from current and estimated future rates in the existing PPA. Rather than having the benefits of the pricing change inure

to PSE&G and its customers on a monthly basis over the remaining term of the existing PPA, PSE&G will receive an up-front payment ("Restructuring Credit"), in the amount of \$100 million, payable at the closing of this transaction.

After opportunity for discovery and written comments, the Board considered this matter at its November 8, 2001 public agenda meeting, and memorialized its determinations by Order date November 8, 2001 (November 8th Order"). In its November 8th Order, the Board: (1) approved the Amended Agreements; (2) directed PSE&G to credit the \$100 million Restructuring Credit to its non-utility generation transition charge ("NTC") deferred balance upon the closing of the transaction; (3) approved Co-Petitioners' limited request for confidential treatment of certain information; (4) denied the Company's request to retain any incentive relating to the Amended PPA; (5) conditionally approved a sharing formula between the Company and its customers of all gas revenues associated with the Eagle Point cogeneration facility ("Facility"); and (6) directed Co-Petitioners to submit fully executed copies of the signature pages to the Interconnection Agreement and the Amended Gas Service Agreement, and evidence of the application of the Restructuring Credit to the NTC deferred balance, within ten (10) days of execution of those agreements.

By letter dated November 26, 2001, the Advocate submitted a Motion for Reconsideration ("Motion"), requesting that the Board reconsider its November 8th Order. In its Motion, the Advocate alleged that: (1) the Board did not, and could not, find that the proposed Amended Agreements will result in a substantial reduction in PSE&G's total stranded costs, as required for approval of the Amended Agreements under N.J.S.A. 48:3-61(l); (2) in its finding that PSE&G has taken reasonable steps to mitigate stranded costs, the Board improperly failed to consider the lack of compensation to customers for allowing Eagle Point to operate the facility as a merchant plant; and (3) there is insufficient justification or record support for the Board's finding that the purported benefits of the Amended PPA should be provided in the form of an up-front lump sum payment, rather than via reduced electric rates over the life of the Amended Agreements.

By letter dated December 4, 2001, PSE&G submitted comments, on behalf of itself and Eagle Point, in response to the Advocate's Motion. Co-Petitioners asserted that the Advocate's arguments are without merit, and requested that the Board deny the Motion.

After discussion among the parties, by letter dated January 8, 2002, PSE&G submitted a letter agreement between Co-Petitioners and the Advocate ("January 8, 2002 Agreement") in order to resolve this matter. The January 8, 2002 Agreement contains the following proposed provisions and modifications to the Amended PPA:

- 1) The effective date of the Amended PPA shall be no earlier than June 1, 2002;
- 2) The up-front Restructuring Credit shall be increased from \$100 million to \$102.5 million, subject to the provisions of Article III, Section C of the Amended PPA, that there be a reduction of \$29,411 for each day that the effective date of the Amended PPA occurs after June 1, 2002.

- 3) El Paso Merchant Energy, L.P., an affiliate of Eagle Point, shall make a contribution of \$0.5 million to schools and libraries in New Jersey, which the Department of Education identifies as deficient technology improvement grants, which shall include \$100,000 to schools and libraries in Gloucester County. This effort shall be undertaken in cooperation with the Advocate, including both the identification of beneficiaries and coordination of implementation no later than June 1, 2002.
- 4) An additional condition precedent to the effectiveness of the Amended PPA shall be: (1) the issuance by the Board of a supplemental Order approving the revised provisions of the Amended PPA and other provisions set forth in the January 8, 2002 Agreement, and affirming the Board's November 8th Order; and (2) the expiration of all relevant notice and appeal periods applicable to the supplemental Order.
- 5) Co-Petitioners shall file revised provisions of the Amended PPA with the Board with a copy to the Advocate reflecting Paragraphs 1, 2 and 4.
- 6) The Advocate's Motion shall be deemed withdrawn upon approval of the January 8, 2002 Agreement by the Board. Provided the January 8, 2002 Agreement is approved and implemented without modification, the Advocate shall request no further reviews or appeals of this matter before any Court or administrative agency.

By letter dated January 9, 2002, PSE&G submitted revised pages to the Amended PPA incorporating the proposed revised provisions to the Amended PPA as set forth above.

Discussion and Findings

In its November 8th Order, the Board approved the Amended PPA, finding that, while the Amended PPA will not eliminate above-market non-utility generation costs associated with the existing PPA, it appeared that, based on then-current market projections, the rates, terms and conditions of the Amended PPA and related agreements would provide immediate and substantial benefits to customers relative to the existing agreements.

Having reviewed the January 8, 2002 Agreement entered into among the parties in response to the Advocate's Motion, the Board FINDS that the January 8, 2002 Agreement and proposed revised provisions to the Amended PPA, as described above, should provide customers with benefits even greater than those provided by the Amended PPA previously approved by the Board in its November 8th Order. The delay in implementation of the Amended PPA until at least June 1, 2002 should provide additional benefits to customers as a result of currently lower short-term natural gas prices that will be reflected in the indexing mechanism of the existing PPA. In addition, PSE&G's NTC account will be credited with an additional \$2.5 million upon closing, thereby further reducing PSE&G's overall deferred balance at the end of the transition period (July 31, 2003). Based on the foregoing, the Board HEREBY APPROVES, without modification, the January 8, 2002 Agreement and revised provisions to the Amended PPA. All

other provisions of the November 8th Order remain in force. Consistent with the terms of the January 8, 2002 Agreement hereby approved, the Advocate's Motion is deemed withdrawn.

DATED: January 11, 2002

BOARD OF PUBLIC UTILITIES

BY:

(SIGNED)

CONNIE O. HUGHES
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

ATTEST: (SIGNED)

HENRY M. OGDEN
ACTING SECRETARY

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